Public Comments + Questions

Questions

Interim Regulations were published August 20, 2008. What is the status of the Interim Regulations? (page 6)

DHCD response: The Interim Regulations were filed as a hard copy with the City's Department of Legislative Reference in 2008 but did not appear to be finalized. Interim Regulations are no longer in effect following the Inclusionary Housing program's sunset in June 2022. New regulations will be drafted following the enactment of legislation.

Is there a description of what qualifies the "community" when referring to community engagement? This often includes the business and home owners while ignoring the renters and even employees of the local businesses. (page 6)

DHCD response: Appendix 3 includes a list of stakeholders engaged for the development of the Inclusionary Housing Requirements Study. As noted in the report, broader and more robust community engagement will be a critical part of the legislative process.

Is there a brief summary o the report that can be pulled out of the larger report?

DHCD response: The final report includes an Executive Summary that discusses the qualitative benefit of Inclusionary Housing and summarizes the policy recommendations for DHCD to consider.

Market rate development feasibility is generally limited to core market locations and to rental apartments. Although it is clear that including affordable units can be a challenging process; how can the report reflect areas and/or neighborhoods that may be a better fit for the affordable units? (Market Conditions section)

DHCD response: Inclusionary housing is intended to provide affordable units in neighborhoods that would not otherwise provide affordable housing. As part of the Citywide Comprehensive Plan, DHCD will be providing a citywide housing analysis that will include a discussion of neighborhoods that may be more conducive to affordable housing projects.

How can the Traditional Inclusionary Zoning Ghousing Policy be more fully investigated? (Traditional Policy section)

DHCD response: The market analysis included as appendices to both the phase one findings and Interim Report provides alternatives showing how units can be created under a traditional inclusionary housing policy for different income levels.

Compliance - According to Baltimore Department of Housing and Community Development staff, unless an inclusionary unit receives federal or local subsidy, it is not tracked or monitored following completion. What are some better options other than lottery system? (Phase 1 Report)

DHCD response: Phase 3 of the Consultant's work includes creating administrative infrastructure and annual reporting requirements to ensure that units are provided for the required affordability period.

Could we get more insight into what distinguishes the Harbor/Penn Station "Core" submarket from the Roland Park/Mt. Washington portion of the "A" submarket? Why would Roland Park/Mt. Washington be included in the top submarket on the City's typology map, but not in this one? (Interim Report)

DHCD response: The Core Submarkets identified in the Interim Report are areas where most residential development was underway or planned. At the time the Interim and Final Reports were published, there was no development planned or underway in either the Roland Park or Mt. Washington submarkets.

My understanding is that the DC IZ program is almost the inverse of this -- applying to the majority of the City, with a relatively small portion exempt. Could the consultants lay out how traditional IZ can work in most of DC but not here? I realize the market is stronger, but is it also that the zoning is stricter, so that density bonuses work there? (Interim Report)

DHCD response: DHCD appreciates your question, however this is beyond the consultants' scope of work.

Could the consultants lay out likely production of their proposal here in Baltimore compared to the production of DC's program? Perhaps looking at what this policy likely would have yielded in Baltimore compared to what DC's policy did yield during some recent range of years? (Interim Report)

DHCD response: DHCD appreciates the intent of the question, however this is beyond the scope of work in the approved consultant's scope of work.

Is there any other city or county in the country that applies its traditional IZ program to such a small portion of its jurisdiction? (Interim Report)

DHCD response: Yes, cities including New Orleans, Louisiana and Pittsburgh, Pennsylvania have geographically-targeted inclusionary housing policies.

Comments

This statement is not consistent with the statute. For projects that receive a "major public subsidy" (TIF, PILOT, High Performance Tax Credit, etc.) triggering the Inclusionary requirements of Section Section 2B-21, the major public subsidy is considered to be the offset for the affordable units (in whole or in part). The City need provide an additional cash subsidy only if, and to the extent that, the Housing Commissioner "determines that the major public subsidy is insufficient to offset the financial impact on the developer of providing the affordable units." Section2B-21(c). Also note that there are a number of potential sources for cash subsidies (if necessary), not just the Inclusionary Housing Offset Fund, and not just the DHCD budget. (page 6)

DHCD response: As the 2007 Ordinance sunset in June 2022, the focus of the Final Report is on recommendations for a restructured inclusionary housing policy.

The current structure used for applying the Investment Threshold is not consistent with the language of the current statute. DHCD currently uses a formula based on an assumed 30 year rent subsidy for the affordable units, that is not found in Section 2B-21(f) of the statute. To the contrary, as defined in that section of the statute, the Investment Threshold only applies to the "Additional," or marginal, "amount of major public subsidy for an entire development between what would would be required to make the development feasible with the affordable units...compared to the amount of major public subsidy that would be required to make the development feasible if it did not include the affordable units required by this subsection." This amount will be substantially less than the 30 year rent subsidy calculation. Moreover, DHCD's current 30 year rent subsidy formula is flawed on its own terms, i.e. by using unverified aspirational asking rents rather than actual rents; by using an up front calculation that inflates for future rent increases while not reducing the up front calculation to present value; by failing to consider that the owner will receive market rent for units rented to households at 30% AMI with tenant and/or project-based vouchers, etc. The result is that DHCD's formula puts almost any project over the Investment Threshold, especially for units at 30% of AMI ---- including projects that receive massive public subsidy (as well as increased density and/or rezoning in many cases). As a result, the grant of exemptions and waivers has been made virtually automatic, undermining the statute.

DHCD response: DHCD agrees with the premise of the comment that the former Inclusionary Housing program did not provide clear and consistent guidelines and relied on City subsidy to make units available. The concerns expressed in this comment are being addressed in new legislation that is intended to simplify requirements to create inclusionary housing units.

This analysis is flawed in that it assumes the developer is entitled to the High Performance Tax Credit (HPTC) (and other major public subsidy) for the market rate units in any proposed project. Further, that none of the subsidy provided by the HPTC is counted as an offset for compliance with the Inclusionary Housing requirement triggered by the HPTC subsidy. This study should provide data on the value per project and per unit of the HPTC and in aggregate annually. As spelled out in Section 2B-21(c), the value of the HPTC to a project should then be allocated first toward offsetting the marginal cost of compliance with the Inclusionary Housing requirements. The Commissioner must first determination that this is insufficient before consideration of how much, if any, additional cash subsidy from the City might be warranted over and above the major public subsidy that a project already receives. (page 10)

DHCD response: Future inclusionary housing legislation is intended to simplify the financial requirements for making inclusionary housing units available.

This is correct, but due largely to the fact that DHCD has interpreted and administered the City's ordinance in a way that is not grounded in the statutory language and has resulted in undermining the effectiveness of the law. This Interim Report appears to simply adopt DHCD's administrative framework, without considering whether or how it is consistent with the statute itself. However, It is also true that the City ordinance itself is weaker than the "traditional" Inclusionary Housing framework adopted by other cities and counties, and should be strengthened, not narrowed, as suggested in the Interim Report. (page 17)

DHCD response: The Interim Report is intended to identify the most effective options for new legislation, rather than to identify recommendations to strengthen the then-existing requirements.

This language is taken out of context, and misconstrues the intent of the statute as a whole. It ignores the sections that follow and flesh out what is an "additional burden" and how "additional" is to be measured. As noted above, the sections that follow indicate that the major public subsidies and land use authorizations that trigger the Inclusionary requirements must be counted and a determination made as to whether they are sufficient to offset the financial impact of compliance in whole or in part, i.e. whether compliance will cause any "additional burden" and if so whether it has been offset. There is nothing in the language of the Inclusionary Housing law to support the assumption of DHCD and this Report that the value of those major public subsidies and the value added by land use/zoning changes should be disregarded, or to treat them as an entitlement that the City provides solely to make market rate units in a project feasible and not the required Inclusionary units. Such a flawed premise undermines achievement of equity and the law's stated purpose, i.e. "to promote the inclusion of housing opportunities for residents with a broad range of incomes in all residential projects that contain 30 or more residential units." (page 18)

DHCD response: DHCD appreciates the context of this comment and would note that as part of their scope of work, the consultants focused on identifying alternatives that would increase the number of inclusionary housing units.

Agreed that there should be a central "intake" process at the earliest stage of consideration of the project by the Department of Planning, HCD, BDC, the Department of Finance and any other city agency. Compliance with the IH requirements should be factored into any negotiation of major public subsidy, land use authorization and/or rezoning. This late "intake" process occurred because developers did not comply with the Inclusionary Housing law. They were allowed to begin the "intake" process when Finance discovered the non-compliance at the time the developers applied for the HPTC, after the building was complete and occupancy was well underway, i.e. after it was too late. This was unacceptable. It would have been more appropriate to deny the HPTC for non-complicance. DHCD claimed that it could not enforce any deadline for compliance because none was included in the statute. Common sense, however, would dictate that compliance can not be allowed after completion and partial or total occupancy of a project. (page 31)

DHCD response: DHCD appreciates your support for this recommendation

Why not use the new 2020 Census data for more accurate counts? (page 88)

DHCD response: 2020 Census data was not yet available at the time of analysis. Additionally, given the impact of Covid-19 in 2020, DHCD believes it is more useful to use pre-Covid data in the context of this report.

Disagree that it is appropriate to structure in lieu fees under the Inclusionary Housing law to generate revenue to meet other laudable policy goals. Encouraging development offsite in a different neighborhood does not meet the central purposes of Inclusionary Housing --- breaking down exclusion and segregation. As noted in the report, this central purpose is ambitious in its own right. IH is just one tool for creating affordable housing and will not be *effective if it is viewed as a means of generating revenue to address redevelopment and homeownership in disinvested neighborhoods. (page 161)*

DHCD response: It is the intent of revised legislation to limit in-lieu units.

Agreed that more funding is necessary, but the amount will not be as substantial if/when the amount of Major Public Subsidy and value of zoning changes are properly accounted for as offsetting the cost of compliance. Both new sources and currently untapped sources should be made available. As an example of available but untapped sources, DHCD does not, but should, coordinate with HABC to use capital funding to write down construction costs or PBVs to cover operating costs for families at 30% and 50% of AMI. The cost per unit of an Inclusionary unit, even under the inflated formula currently used by DHCD, is substantially less than the costs being incurred by HABC and other public agencies to build/redevelop replacement units. (page 161)

DHCD response: It is the intent of revised legislation to simplify how inclusionary housing units are provided.

Agree that Inclusionary requirements should probably be calibrated to strength of City submarkets or typologies. Do not agree that compliance should be eliminated in all submarkets except for a small band around the harbor, designated as the "Core area," and dramatically reduced even in that "Core area." We've already missed the boat on the Core area where almost every potential site around the harbor has already been developed without IH units. Development is increasingly happening in other areas in Southeast Baltimore and other parts of the White L such as Hampden and Mt. Vernon --- usually with Major Public Subsidy and zoning concessions. These are strong market areas. To exempt them now would undermine the City's equity goals as well as the purpose of the IH ordinance. (page 161)

DHCD response: The final report will provide additional information on recommended neighborhoods.

Outreach I would like to see more about how this will be developed (Phase 1 Report)

DHCD response: When the Phase 1 report was published, Council Bill 22-0195 had not been introduced. Outreach will be centered around the required legal notifications when the bill is announced for a hearing, including legal notifications and posting on social media.

Option #3. Traditional inclusionary housing requirements applicable to changing markets or around transit assets - from my notes this was one of the best choices (Phase 1 Report)

DHCD response: The Final Report identifies Option #3 as the most feasible option for a revised Inclusionary Housing policy.

Recommendation - How will these additional resources be implemented? Will resources be direct funding to the developer? Is there an opportunity for some creative financial strategy? (Phase 1 Report)

DHCD response: The recommendation to create an additional tax abatement that would be limited to inclusionary housing developments will likely be evaluated by the recently announced Tax Credit Workgroup.

MBIA agrees with the Report that the cost of inclusionary housing units, while important to the City, cannot be borne by Baltimore development projects which are already confronting high costs and feasibility challenges. (Interim Report)

DHCD response: DHCD appreciates the insight provided in this comment.

MBIA agrees that, in the absence of direct payments, additional tax relief is a potentially viable way to account for the added cost of inclusionary housing units. We would need to work with the consulting team, the City, and our members, to see if the Report's suggested 15% credit would sufficiently offset the cost of an affordability set-aside, as well as whether the suggested 5-10% setaside is the correct target. (Interim Report)

DHCD response: DHCD anticipates seeking additional input as revised legislation moves forward.

If sufficient funding or incentives were available to support the related loss of revenue, MBIA supports the inclusion of lower-AMI units in the IH Program. However, we recognize that focusing on higher-AMI units achieves broader (if not deeper) affordability goals at a lower overall cost. That is an important balance to be struck as IH Program revisions are considered. (Interim Report)

DHCD response: DHCD appreciates the insight provided in this comment.

We look forward to further discussion about the Report's focus on the Core Markets as the only viable geography for a revised IH Program. For a variety of reasons, projects in these markets typically have the most expensive per-unit costs, and therefore may be a less-efficient way of providing units than finding a way to do so in other markets, especially the described Strong Markets. (Interim Report)

DHCD response: Focusing units in core submarkets is consistent with the intent of inclusionary housing of making units available in the city's high market areas.

The fee-in-lieu approach is touched on in the Report only as having potential to yield affordable units elsewhere in the City, in locations distinct from the affected development project. MBIA opposes a fee-in-lieu because it would impose a cost on a project that the Report has already concluded the project cannot bear. If there is no funding source to provide the units directly onsite, there is presumably no source to provide a fee-in-lieu for development of inclusionary units offsite. (Interim Report)

DHCD response: DHCD agrees that an inclusionary housing program is effective when there is a consistent set of requirements and that fees-in-lieu should only be used when it can be demonstrated that units are not otherwise feasible.

In general, I just think this is likely to look odd as a proposal (especially to advocates), and it would be good to know if Baltimore City is something of a unicorn nationally, and, if so, why, with specific comparisons. (Interim Report)

DHCD response: The proposed inclusionary housing policy is based on market risks and assumptions that for-profit developers would be required to assume in making units available based on available and proposed tax credits and absent a cash-based subsidy.

Enforcing the existing ordinance through changes to DHCD's interpretation of the ordinance. Those suggested revisions to the current interpretation are detailed in the 2019 Memo. Most importantly, DHCD should consider the value of the major public subsidy or zoning change in assessing the monetary benefit to the developer. In light of that monetary benefit, the developer should not be granted a waiver or exception to the current IH affordable unit requirements in most cases. (Interim Report)

DHCD response: DHCD appreciates the intent of this recommendation. However, the intent of revising the former Inclusionary Housing requirements is to simplify.

Alternatively, adopt a return on investment (ROI) test for major public subsidies rather than an offset test. Traditionally, ROI necessary for real estate project range from 8% to 20%. Major public subsidies, such as Tax Incremental Financing (TIF) of Port Covington or Harbor Point, should not be supporting ROI over a certain level (for example 10%) without a concrete public benefit in deeply affordable housing. (Interim Report)

DHCD response: It is the intent of revised legislation to simply qualifying criteria to create inclusionary housing units by requiring developers to provide a plan showing how units will be made available rather than the City undertaking analyses.

Consider greater use of existing tenant-based subsidies, such as partnering to place projectbased Housing Choice Vouchers administered by the Housing Authority of Baltimore City (HABC) in market-rate development in order to make those units affordable to residents below 30% AMI. Project based vouchers (PBV) could be set aside annually by HABC for IH developments. For instance, under current IH requirements, two vouchers would satisfy the "6% at 30% AMI" requirement for 30-unit development with a major subsidy. Six vouchers would cover a 100-unit development. This increases the housing choices and neighborhoods 4 available to residents with vouchers. The City should also require developers to ensure that a certain number of these 30% AMI units are UFAS compliant in order to increase opportunities for persons with disabilities (Interim Report)

DHCD response: All inclusionary housing units will be required to meet fair housing laws, including source of income requirements.

Reconsider whether the city has other incentives that it can provide to developers in the form of land use, zoning and permitting benefits that could bridge any gap in viability for affordable units. Very little development is done in Baltimore City without direct or indirect "subsidy." The IH ordinance should capture the wide range of accommodations that are provided developers currently (Interim Report)

DHCD response: DHCD will take this into consideration when the final report is drafted.

Count only the additional hard costs of developing the affordable units, instead of subsidizing the developer's profit and overhead over the life of the affordable unit. Alternatively, as suggested above, use an ROI standard for determine exemptions. (Interim Report)

DHCD response: Revised legislation will require developers to determine how to make inclusionary housing units feasible. Therefore, DHCD will not perform financial analyses.

Require developers to develop rental units that convert to co-operative or condominium type units to address rental housing's lack of real estate "equity." Partnerships with communitybased organizations and other entities experienced in administering and managing such affordable housing units (including robust affirmative marketing and oversight) would also fulfill the Department's mandate to operationalize equity in accordance with Ordinance 18-160. (Interim Report)

DHCD response: DHCD believes this requires additional research by the City's Law Department and is beyond the scope of inclusionary housing legislation.